

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.851 OF 2005

Rajesh D. Shah & Ors. ..Petitioners.

Vs.

Greater Bombay Co-operative

Bank Ltd. ..Respondent.

....

Mr.V.C.Ghosalkar for the Petitioner.

Mr.Kirit Munshi i/b Shaunak Satpute for Respondent
No.1.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

28th March, 2005.

P.C. :

1. An ad-interim ex parte injunction which was granted by the Co-operative Court came to be vacated and that order has been confirmed by the Co-operative Appellate Court.

2. The Respondent issued a notice under Section 13(2) of the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002. The reply filed by the Petitioner on 18th November, 2004 was dealt with in a letter dated 17th December, 2004 in which the bank furnished brief responses to the contentions of the Petitioner. The bank stated that the Petitioner had availed of advances against the execution of appropriate security documents and a mortgage of an office and a flat at Dadar as well as of factory premises at Vapi. The account had become irregular on account of a failure of the Petitioner to pay the outstanding dues. Upon the defaults of the Petitioner, the account had been classified as a Non Performing Asset in the books of account of the secured creditor and a bare glance at the history of the account would show that the operations have been far from satisfactory. Thereafter measures have been taken under Section 13(4) by taking possession of the office at Dadar. The notice under Section 13(2) recites that three facilities were given to the Petitioner. As of 31st August, 2004, an amount of Rs.48.81 lacs was due under the cash credit facility, an amount of Rs.56.17 lacs against the first term loan facility and an amount of Rs.15.91

lacs as against the second term loan facility.

3. Under Section 17 of the Act a remedy has been provided to approach the Debt Recovery Tribunal once a measure under Section 13(4) is taken. The Petitioner, instead of availing of the statutory remedy under Section 17 has chosen to file proceedings before the Co-operative Court. Section 34 of the Act provides that no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Debt Recovery Tribunal or the Appellate Tribunal is empowered by the Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by the Act or by the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

4. In its judgment in Mardia Chemicals Ltd. v. Union of India - (AIR 2004 SC 2371), the Supreme Court does recognise that to a very limited extent the jurisdiction of the civil court can be invoked, where for example, the action of the secured creditor is fraudulent or the claim is so absurd

and untenable that it may not require any probe. Similarly, the exercise of the jurisdiction has been held to be permissible to the extent to which an action could be brought in civil court in cases of English mortgages.

5. At this stage, no opinion need be expressed finally on whether the Co-operative Court does have jurisdiction, because, the Court was in, in my view, justified in vacating the ad interim ex parte injunction and in declining to grant any interim relief. There has been a default in the account of the Petitioner since 2002. After issuing a notice under Section 13(2) and after duly considering the objections filed by the Petitioner, the Respondent has taken measures under Section 13(4). The grant of an injunction was, in the circumstances, clearly not warranted. In the circumstances, there is no merit in the Petition which is accordingly rejected.